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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,917	04/08/2003	Joseph P. McGurk	END-875	4436
26875	7590	05/05/2006	EXAMINER	
WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			BOUCHELLE, LAURA A	
			ART UNIT	PAPER NUMBER
			3763	

DATE MAILED: 05/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/713,917

Applicant(s)

MCGURK, JOSEPH P.

Examiner

Laura A. Bouchelle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Response to Amendment

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1, 3, 6, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bialecki et al (US 2003/0060771) in view of Barr et al (US 3520292).
3. Bialecki discloses a safety catheter comprising a needle assembly 24 comprising a needle 38 attached to a needle hub 40 (Page 2, paragraph 0023); a catheter assembly 22 comprising a catheter 28 attached to a catheter hub 30, wherein the needle is coaxially received in the catheter (Page 2, paragraph 0022); and a needle tip protector 26 disposed within the catheter hub, slidably disposed onto the needle, whereby when the needle protector is removed from the catheter the protector remains attached to the needle (Page 4, claim 1). See Figs. 1 and 2.
4. Regarding claims 3 and 10, Bialecki discloses that the needle has a constant diameter (Page 1, paragraph 0009).
5. Claims 1, 6 and, 10 differ from Bialecki in calling for the needle to have a bent area. Barr teaches a needle holder comprising a needle 16 having a bent area 14 and a bevel, wherein

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no portion of the bevel is contained in the bent area, and further that the bent area causes the needle to off set from, but generally parallel to the axis of the needle. See Fig. 4. This configuration prevents the needle from moving longitudinally within the protector 12. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the needle of Bialecki to have a bent area as taught by Barr to prevents the needle from moving longitudinally within the protector.

6. Claims 4, 5, 8, 9, 12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bialecki in view of Barr as applied to claims 1, 6 and 10 above, and further in view of Luther (US 6585704).

7. Claims 4, 8, and 12 differ from Bialecki in view of Barr in calling for the needle to include a sleeve. Claims 5, 9, and 13 call for the sleeve to be proximal the bent area of the needle. Luther teaches a needle 32 having a sleeve 12 proximal the bend 20 that retains the needle within the protector (Page 2, paragraph 0028). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the needle of Bialecki to include a sleeve proximal the bend as taught by Luther to retain the needle within the protector.

8. Claims 2, 7, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bialecki et al in view of Barr as applied to claims 1, 6, and 10 above, and further in view of Bell (US 6261259). Claims 2, 7, and 11 differ from the above teachings in calling for the bent area of the needle to be angled 45 – 90 degrees away from the original direction. Bell teaches a needle

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having a bend of about 0 – 180 degrees to accommodate a variety of uses (Col. 3, lines 44-46). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the bent needle of Bialecki in view of Luther to have an angle of 45 to 90 degrees as taught by Bell to accommodate a variety of uses.

Response to Arguments

9. Applicant's arguments with respect to claims 1, 6, and 10 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura A. Bouchelle whose telephone number is 571-272-2125.

The examiner can normally be reached on Monday-Friday 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 517-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Laura A Bouchelle
Examiner
Art Unit 3763


NICHOLAS D. LUCCHESI
SUPERVISOR, ART EXAMINER
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